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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/889,105	11/13/2001	Jeremy Nicholas Ness	P 0281553	8145

909 7590 08/28/2003  
PILLSBURY WINTHROP, LLP  
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MCLEAN, VA 22102

EXAMINER

MRUK, BRIAN P

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 08/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

5K

# Office Action Summary

Application No.

09/889,105

Applicant(s)

NESS ET AL.

Examiner

Brian P Mruk

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 12 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☒ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                 | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                        | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>10</u> | 6) <input type="checkbox"/> Other:  |

**DETAILED ACTION**

1. This Office action is in response to Applicant's amendment filed June 12, 2003. Applicant has amended claims 4-8. New claims 14-17 have been added. Currently, claims 1-17 remain pending in the application.

2. The text of those sections of Title 35 U.S. Code not included in this action can be found in the prior Office action, Paper No. 8.

3. The objection of the specification for not containing an abstract of the disclosure is withdrawn in view of applicant's amendments and remarks. Specifically, applicant has provided an abstract of the disclosure.

4. The objection of the specification for the use of non-capitalized trademarks is maintained for the reasons of record.

5. The objection of claims 5-9 is withdrawn in view of applicant's amendments and remarks. Specifically, applicant has removed the improper multiple dependent claim language from claims 5-8.

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6. The objection of claim 4 is withdrawn in view of applicant's amendments and remarks. Specifically, applicant has amended instant claim 4 to recite a proper Markush listing of the surfactant component.

7. The rejection of claims 1-4 and 10-13 under 35 U.S.C. 102(b) as being anticipated by Michael, U.S. Patent No. 4,961,871, is maintained for the reasons of record.

### **NEW GROUNDS OF REJECTION**

#### ***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 5-9 and 14-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Michael, U.S. Patent No. 4,961,871.

Instant claims 5-9 and 14-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Michael, U.S. Patent No. 4,961,871, for the reasons of record found in the last Office action, Paper No. 8, Paragraph No. 8.

#### ***Response to Arguments***

10. Applicant's arguments filed June 12, 2003 have been fully considered but they are not persuasive.

Applicant argues that all of the trademarks referred to in the instant specification are used in the manner referred to by the examiner. However, the examiner respectfully asserts that each letter of the trademarks recited in the instant specification should be capitalized in order to be proper. **See MPEP 608.01(v).**

Applicant argues that Michael, U.S. Patent No. 4,961,871 (hereinafter "Michael"), discloses that their encapsulating, cross-linked anionic gum is a wall, whereas the instant claims recite that the encapsulating, cross-linked anionic gum is a matrix. However, the examiner asserts that the term "matrix" is defined as "A material in which something is enclosed" (see attached Merriam-Webster's Collegiate Dictionary definition of the term "matrix"). Therefore, since an encapsulating wall encloses a material, the examiner asserts that the "encapsulating wall" disclosed by Michael meets the limitation of an "encapsulating matrix" recited in the instant claims.

### ***Conclusion***

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Mruk whose telephone number is (703) 305-0728. The examiner can normally be reached on Monday-Thursday from 7:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta, can be reached on (703) 308-4708. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9310 (Before Final) and (703) 872-9311 (After Final).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Bpm  
Brian Mruk  
August 20, 2003

*Brian P. Mruk*  
Brian P. Mruk  
Patent Examiner  
Tech Center 1700